

In the High Court of Uttaranchal, at Nainital.

Income Tax Appeal No. 41 of 2006

Commissioner of Income Tax,

Dehradun

.....

Appellant.

Vs.

Kailashanand Mission Trust,

Luxman Jhula, Rishikesh

.....

Respondents.

Sri P. Maulekhi, Senior Advocate,

learned counsel for the appellant.

Coram: Hon'ble P.C. Verma, J.

Hon'ble B.C. Kandpal, J.

Dated: 20th February, 2006.

(Per: Hon'ble B.C. Kandpal, J.)

This appeal has been preferred by the Commissioner of Income Tax, Dehradun, challenging the order dated 5th of August, 2005, passed by Income Tax Appellate Tribunal.

2- The facts of the case are that assessee trust was created by Swami Kailashanand. The Assessing Officer observed that subsequent rectifications were carried out in original deed. During the course of assessment proceedings, the Assessing Officer made certain queries from the assessee in respect of the modifications carried out in the original trust deed. The assessee trust was continuously enjoyed the exemptions under Section 11 of the Income Tax Act for the last 30 years on the basis of the objectives of the trust.

3- The assessing Officer not being satisfied with the explanation of the assessee held that the original trust deed has been altered and in view of the objectives introduced subsequently, the assessee trust is not a charitable trust.

4- The assessment order dated 26-3-2004 was challenged before the Commissioner of Income Tax (Appeal). The Commissioner Income Tax (Appeal) dismissed the same.

5- The assessee thereafter filed income tax appeal before the Income Tax Appellate Tribunal, which was partly allowed vide order dated 5th of August, 2005.

6- The Commissioner, Income Tax has challenged the aforesaid impugned order by way of this appeal before this court.

7- We have heard the learned counsel for the appellant and perused the record.

8- The learned I.T.A.T., after considering the facts and circumstances relating to this matter and the entire material referred to by the authorities below and the parties before it as well as after hearing rival submissions, found that the objections of the Assessing Officer were wholly untenable.

9- The impugned order reveals that ITAT perused the trust deed available on the record of the appeal and thus came to conclusion that the objects of the trust were definitely charitable and subsequent deed did not remove any object of the original trust nor introduced any objects which were contrary to the main objects of the trust or inconsistent to the same. We do not find any ground to reverse the findings recorded by ITAT on this issue.

10- After considering the entire material before us, we are of the view that the impugned order dated 5th of August, 2005 is absolutely justified and needs no interference. Learned I.T.A.T. has rightly set aside the issue relating to the addition of Rs. 42,67,000/- and to send back the matter to the Assessing Officer for examining the entire material for deciding the issue afresh. Hence, there is no scope for interference in the impugned order.

11- We do not find any substantial question of law involved in this case, therefore, the present appeal being devoid of any force, is liable to be dismissed.

12- Accordingly the appeal is dismissed.

(B.C. Kandpal, J.)

(P.C. Verma, J.)